

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

BECKY LYNN STEIN,

Plaintiff,

v.

Case No. 12-C-0090

CHRIS HOOVER et al.,

Defendants.

SCREENING ORDER

Plaintiff Becky Lynn Stein, who is proceeding pro se, lodged a civil rights complaint under 42 U.S.C. § 1983, alleging that his civil rights were violated. Plaintiff is currently incarcerated at Washington County Jail.

Pursuant to 28 U.S.C. § 1915(b)(1), a prisoner plaintiff is required to pay the statutory filing fee of \$350.00 for a federal lawsuit. If a prisoner does not have the money to pay the filing fee up front, she can request leave to proceed *in forma pauperis* in order to pay the fee over time. To proceed with an action *in forma pauperis*, the prisoner must complete a petition and affidavit to proceed *in forma pauperis* and return it to the court with a certified copy of the prisoner's trust account statement showing transactions for the prior six months. The court then assesses and, when funds exist, collects from the plaintiff at the time the action is filed an initial partial filing fee of twenty percent of the average monthly deposits to or the average monthly balance in the prisoner's trust account for the six-month period immediately preceding the filing of the complaint.¹

¹In no event will a prisoner be prohibited from bringing a civil action because he or she has no assets and no means by which to pay the initial partial filing fee. 28 U.S.C. § 1915(b)(4).

In this case, the plaintiff has filed a certified copy of her prison trust account statement for the six-month period immediately preceding the filing of her complaint. Further, she has been assessed and has paid an initial partial filing fee of \$10.27.

Upon review of the trust account statement and affidavit, I am satisfied that plaintiff is unable to pay the full statutory filing fee in this case. Leave to proceed *in forma pauperis* therefore will be granted.

Next, the court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b).

A claim is legally frivolous when it lacks an arguable basis either in law or in fact. *Denton v. Hernandez*, 504 U.S. 25, 31 (1992); *Neitzke v. Williams*, 490 U.S. 319, 325 (1989); *Hutchinson ex rel. Baker v. Spink*, 126 F.3d 895, 900 (7th Cir. 1997). The court may, therefore, dismiss a claim as frivolous where it is based on an indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*, 490 U.S. at 327. "Malicious," although sometimes treated as a synonym for "frivolous," "is more usefully construed as intended to harass." *Lindell v. McCallum*, 352 F.3d 1107, 1109-10 (7th Cir. 2003) (citations omitted).

To state a cognizable claim under the federal notice pleading system, the plaintiff is required to provide a "short and plain statement of the claim showing that [he] is entitled to relief." Fed. R. Civ. P. 8(a)(2). It is not necessary for the plaintiff to plead specific facts and his statement need only "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests."

Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). However, a complaint that offers “labels and conclusions” or “formulaic recitation of the elements of a cause of action will not do.” *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009) (quoting *Twombly*, 550 U.S. at 555). To state a claim, a complaint must contain sufficient factual matter, accepted as true, “that is plausible on its face.” *Iqbal*, 129 S. Ct. at 1949 (quoting *Twombly*, 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). The complaint allegations “must be enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at 555.

In considering whether a complaint states a claim, courts should follow the principles set forth in *Twombly* by first, “identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Iqbal*, 129 S. Ct. at 1950. Legal conclusions must be supported by factual allegations. *Id.* If there are well-pleaded factual allegations, the court must, second, “assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Id.*

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that: 1) he was deprived of a right secured by the Constitution or laws of the United States; and 2) the deprivation was visited upon him by a person or persons acting under color of state law. *Buchanan-Moore v. County of Milwaukee*, 570 F.3d 824, 827 (7th Cir. 2009) (citing *Kramer v. Village of North Fond du Lac*, 384 F.3d 856, 861 (7th Cir. 2004)); see also *Gomez v. Toledo*, 446 U.S. 635, 640 (1980). The court is obliged to give the plaintiff’s *pro se* allegations, “however inartfully pleaded,” a liberal

construction. *See Erickson v. Pardus*, 551 U.S. 89, 127 S. Ct. 2197, 2200 (2007) (quoting *Estelle v. Gamble*, 429 U.S. 97, 106 (1976)).

Stein asserts a variety of claims against a variety of defendants. Stein alleges “sexual harassment” by Captain Chris Cooper, but fails to specify what he did or when. She does not provide any further detail about the alleged sexual harassment; merely that it occurred. This is not sufficient to state a constitutional claim. While an allegation of sexual abuse of a prisoner would state a claim under the Eighth Amendment for cruel and unusual punishment, verbal harassment does not. *See DeWalt v. Carter*, 224 F.3d 607, 612 (7th Cir.2000) (“Standing alone, simple verbal harassment does not constitute cruel and unusual punishment, deprive a prisoner of a protected liberty interest, or deny a prisoner equal protection of the laws.”). Sexual harassment can also be a violation of equal protection. *See Markham v. White*, 172 F.3d 486, 488, 491–93 (7th Cir. 1999). But Plaintiff’s allegations are not sufficient to state such a claim. *See Iqbal*, 129 S. Ct. 1949 (“A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do.”) (internal quotes omitted).

Stein also alleges that Captain Boyle, apparently a female (she is also referred to in the complaint as Ms. Boyle), talked about her “naked body” during a strip search, but there is no suggestion as to what she said or what the context was. There is nothing intrinsically wrong or harmful about the naked body. Absent some allegation suggesting that Captain Boyle intended to harm or degrade Plaintiff by her comments, it is difficult to see how using the term “naked body” could amount to a violation of Plaintiff’s constitutional rights.

Stein also asserts a variety of other claims that are not cognizable. For instance, she first alleges “harassment” by Deputy U.S. Marshal Hoover. While Stein does not assert many specifics

she alleges Hoover “said I called Judge Goodstein and left a bad message on his machine,” that he showed up a lot at her place of employment, and that he lied to a doctor in Racine about a different case of hers. (ECF No. 1 at 3.) Stein contends she asked Plea Director Marion Morgan for copies of her “statements” and alleges Morgan never mailed them. Stein alleges that she was injected with Haldol while in segregation and that Captain Noble and Ms. McDermott “laughed” at her. (*Id.*) Stein further asserts Psychologist Durante “intimidat[ed]” her to take a drug Stein did not want to take because she thought it was affecting her heart. She contends Mr. Tarr and Warden Schaub “kicked [her] out of all women’s prisons.” Finally, Stein named Captain Boyle, Sergeant Mike Lambreck, and Captain Heshke as defendants but asserts no claims against them and provides no factual details about her encounters with them.

Federal Rule of Civil Procedure 8(a)(2) provides that a complaint must include only “a short and plain statement of the claim showing that the pleader is entitled to relief.” This statement must simply “give the defendant fair notice of what the plaintiff’s claim is and the grounds upon which it rests.” *Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 512 (2002) (quoting *Conley*, 355 U.S. at 47); *see also Thomson v. Washington*, 362 F.3d 969, 970–71 (7th Cir. 2004) (no heightened pleading requirement for *pro se* prisoner civil rights complaint). Of course, if a complaint pleads facts that show that a plaintiff does not have a claim, the complaint should be dismissed “without further ado.” *Thomson*, 362 F.3d at 970. Captain Boyle, Sergeant Mike Lambreck, and Captain Heshke do not have fair notice of what Plaintiff’s claim against them is; they will accordingly be dismissed as parties to the case. Similarly, as to the other named defendants, Stein does not assert a cognizable constitutional claim and she does not provide them the notice necessary to defend themselves.

Thus, because Plaintiff has failed to set forth cognizable constitutional claims against any of the defendants, her complaint will be dismissed.

IT IS THEREFORE ORDERED that the plaintiff's motion for leave to proceed *in forma pauperis* be and hereby is **GRANTED**.

IT IS FURTHER ORDERED that this action be and hereby is **DISMISSED** pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1) for failure to state a claim.

IT IS FURTHER ORDERED that the Clerk of Court document that this inmate has brought an action that was dismissed for failure to state a claim under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b)(1).

IT IS FURTHER ORDERED that the Clerk of Court document that this inmate has incurred a "strike" under 28 U.S.C. §1915(g).

IT IS FURTHER ORDERED that the Secretary of the Washington County Sheriff or his designee shall collect from the plaintiff's prison trust account the \$ 339.73 balance of the filing fee by collecting monthly payments from the plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the prisoner's trust account and forwarding payments to the Clerk of Court each time the amount in the account exceeds \$10 in accordance with 28 U.S.C. § 1915(b)(2). The payments shall be clearly identified by the case name and number assigned to this action.

IT IS FURTHER ORDERED that the Clerk of Court enter judgment accordingly.

IT IS ALSO ORDERED that copies of this order be sent to the county sheriff and to Corey F. Finkelmeyer, Assistant Attorney General, Wisconsin Department of Justice, P.O. Box 7857, Madison, Wisconsin, 53707-7857.

I FURTHER CERTIFY that any appeal from this matter would not be taken in good faith pursuant to 28 U.S.C. § 1915(a)(3) unless the plaintiff offers bonafide arguments supporting his appeal.

Dated at Green Bay, Wisconsin, this 1st day of March, 2012.

s/ William C. Griesbach
William C. Griesbach
United States District Judge